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Supreme Court of the United States

OCTOBER TERM, 1949

No. 632

AURORA G. TAMEZ, Independent Executrix of the Estate of R. I. Tamez, Deceased, PETITIONER,

versus

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Fifth Circuit entered on the 22nd day of November, 1949, affirming the decree of the District Court of the United States for the Western District of Texas, Western Division, entered on the 19th day of August, 1948, (the order by the Circuit Court of Appeals, denying a petition for re-hearing, having been entered January 27th, 1950).

OPINIONS BELOW

The judgment of the lower Court was affirmed without opinion other than the memorandum opinion attached to this brief, "Exhibit A".

BASIS OF JURISDICTION

Jurisdiction is invoked under Section 1254 of Title 28 of United States Code. (62 Stat. 928, June 25, 1948, C. 646). Jurisdiction of the Circuit Court of Appeals was invoked under Section 128 of the Judicial Code (28 U.S. C.A. Sec. 125). Jurisdiction of the District Court was invoked under Sections 1B and 205C of the Emergency Price Control Act of 1942, as amended, and under Section 206B of the Housing and Rent Act of 1947.

QUESTIONS PRESENTED

1. Does the Housing Expediter have the authority to file, and does the District Court have the jurisdiction to hear, in a suit filed after the expiration of the Emergency Price Control Act of 1942, a cause of action wherein the Housing Expediter seeks to recover from a landlord, on behalf of certain tenants, restitution for overcharges allegedly collected in violation of the Emergency Price Control Act of 1942.

2. Did the Housing Expediter's petition state a claim upon which the relief prayed (restitution) may be granted where:

(a)—The suit was filed long after the expiration of the Emergency Price Control Act of 1942.

(b)—The overcharges were alleged to have been collected in violation of the Emergency Price Control Act of 1942.

(c)—No equities were alleged upon which to base a claim for equitable relief.

(d)—No injunction was sought.

3. In a suit brought by the Housing Expediter to recover restitution for alleged violations of the Housing and Rent Act of 1947, does the District Court have jurisdiction to consider whether the rentals purportedly established for defendant's property by the Housing and Rent Act of 1947, were arbitrary, unreasonable, out of line with other rentals being established on properties of equal or less value and with rentals actually being received by others for comparable properties on July 1st, 1947 and whether such maximum rentals deprived defendant of the use of his property without due process of law; the Housing and Rent Act of 1947 having no prohibition denying the District Courts the jurisdiction or power to pass on the validity or constitutionality of the rentals established by it or of regulations issued pursuant to its provisions and providing no other tribunal such as the Emergency Court of Appeals with exclusive jurisdiction to pass on these questions.

4. Does a defendant, against whom the equitable remedy of restitution is sought by the Housing Expediter, have the right to plead and prove equities in his favor such as the fact that a tenant paid no more than a reasonable rent; that a tenant was satisfied with the rent paid; that additional services and equipment, which were not taken into consideration at the time the maximum rent was fixed, were actually furnished a tenant at his request, that the tenant voluntarily agreed to pay a reasonable amount therefor and that the amount actually paid for such extra services and equipment was a reasonable amount?

SUMMARY STATEMENT

This suit was filed in the District Court by the Housing Expediter on March 11th, 1948 long after the

expiration of the Emergency Price Control Act (record page 2 to 5); the Housing Expediter sought judgment for treble damages for violations which had occurred under the Emergency Price Control Act of 1942 and which were not barred by the one year statute of limitations. The Housing Expediter also sought restitution to numerous tenants for all overcharges which were alleged to have been collected over a period of many months. Many of the overcharges, for which restitution was sought, were alleged to have been made during the years 1945, 1946 and 1947. A substantial number of the overcharges occurred during the period while the Emergency Price Control Act of 1942 was in effect although a substantial number of overcharges occurred while the Housing and Rent Act of 1947 was in effect (Rec. pg. 5).

Defendant filed a Motion to Dismiss (Rec. pg. 6) challenging that part of the cause of action which sought restitution based on violations occurring prior to July 1st, 1947, on three separate grounds.

(1) That the Court did not have jurisdiction of such cause of action.

(2) That no claim was stated upon which relief can be granted.

(3) That Plaintiff was vested with no authority to prosecute such cause of action.

This motion was overruled in its entirety. (Rec. pg. 40).

The defendant thereupon filed an answer (Rec. pg. 8). In his answer, he denied jurisdiction. He contended that a claim upon which relief could be granted was not stated either for treble damages or restitution for violations occurring prior to July 1, 1947. He also plead the one year statute of limitations and laches. By way of

further answer, he claimed that all rents which were purportedly established by the Housing and Rent Act of 1947, were as to him, in the particular instances involved, unreasonable and arbitrary and that they did not allow him a reasonable return on his investment and were not in line with other rentals being established on properties of equal or less value, or with rentals actually being received for comparable properties on July 1, 1947 and that such rentals, as established by the Housing and Rent Act of 1947, did not take into consideration the increase since 1942 of depreciation charges, maintenance charges, taxes, and other expenses incurred in connection with the operation of the particular properties involved. He alleged that the rentals established as to the particular properties by the Housing and Rent Act of 1947 were arbitrary, unreasonable, unconstitutional, and deprived him of the use of these properties without due process of law.

In his Trial Amendment (Rec. pg. 27), he alleged, in the alternative, that if he should be mistaken in his allegations, that such rentals, and the Act of Congress in so establishing them, were unconstitutional, that the Housing and Rent Act of 1947 did not establish a maximum rent on such units as alleged to have been established by the Plaintiff.

In addition, in his answer, the Defendant, set up numerous grounds as to why it would be inequitable to adjudge restitution against him and in favor of the tenants. These grounds were specifically set out as to each rental unit involved in the suit. Generally, the grounds revolved around the allegation that the amounts being charged by him were reasonable and that the tenants were satisfied and never made demand for restitution and did not want restitution. In numerous instances, the Defendant alleged that special services and equipment were furnished to the tenants at their request at an expense to

him, which increased equipment and services were taken into consideration between him and the tenants in arriving at the rental charged, but were not taken into consideration when the maximum rents were fixed.

The Plaintiff filed a Motion to Strike substantially all of the answer, (Rec. pg. 29). He filed a Motion to Strike Defendant's Trial Amendment (Rec. pg. 28). Both of these motions were granted (Rec. pg. 40). The matter which was stricken from the answer is set out in emphasis in the answer as it appears in the record.

After the above matter was stricken from the answer, the case proceeded to trial and resulted in a jury verdict on all issues for Plaintiff. (Rec. pg. 34).

The appellant below, R. I. Tamez, died in San Antonio, Bexar County, Texas, on the 19th day of November, 1949. By an order entered by the County Court of Bexar County, Texas, on the 20th day of December, 1949, appearing in Volume 376, page 452 of the Probate Minutes of said Court, the Will of said R. I. Tamez was ordered admitted to Probate and your petitioner was appointed Independent Executrix of the Will and Estate of said deceased; your petitioner has qualified and is now the duly acting Independent Executrix of said Will and Estate, and is duly authorized to prosecute this petition for writ of certiorari in her capacity of Independent Executrix.

REASONS WHY THIS PETITION SHOULD BE GRANTED

This petition raises only clear cut questions of law on important matters governing the construction of two statutes of the United States which affect more people directly than any other Acts ever passed by Congress.

The questions are raised by the pleadings and by the orders of the Court in connection therewith.

1. It is important that this Court determine the first and second questions presented.

The Housing Expediter has never been expressly vested by Congressional action or Executive Order with any power to bring an action for restitution of overcharges collected in violation of the Emergency Price Control Act.

The holding of the lower Court in this case extends the doctrine of *Porter vs. Warner Holding Co.*, 328 U.S. 395, 90 L. Ed. 1332 to such extremes that there now exists no time limit whatever within which an action must be brought against a landlord for money recovery based on alleged violations of the Emergency Price Control Act of 1942. At least there is no such limitation as long as there is a national policy favoring the control of rents as to some types of rental accommodations in some sections of the country, (A policy which may continue from one political administration to another for years).

2. It is important that this Court determine the third question presented because this is a basic question of the jurisdiction of the District Courts which has never been determined. The question has been raised by the Emergency Court of Appeals in the case of *Talbot vs. Woods*, 164 Fed. 2d 493 but not answered by that Court or by any Court. The Emergency Court of Appeals in the Talbot case stated that "The Emergency Court of Appeals has no jurisdiction as such to entertain a complaint seeking a determination of what is complainant's maximum rent as established by or under the Housing and Rent Act of 1947, or to pass on its validity. What remedy may be available to complainant in some other Court to obtain such a determination, by declaratory judgment or otherwise is not for us to say."

It was only in the face of strong dissenting opinions that the Supreme Court denied defendants the right to attack the validity of regulations promulgated under the

Emergency Price Control Act in enforcement proceedings brought against them. See *Bowles vs. Willingham*, 321 U.S. 503, 88 L. Ed. 892 and *Yakus vs. United States*, 321 U.S. 414, 88 L. Ed. 834.

The holding of the lower Courts in this case deprives the defendant of any forum in which he can contest the validity of maximum rents which the Housing Expediter claims were established for defendant's properties by the Housing and Rent Act of 1947.

3. The holding of the lower Courts, that in an action in which equitable relief is sought the defendant may not introduce evidence of equities which exist in his behalf, ignores the rule established by this Court in *Hecht vs. Bowles*, 321 U.S. 321; 88 L. Ed. 754. Thus the third question presented should be passed on in order to clarify the point that the rules governing equitable proceedings generally apply to suits for restitution brought by the Housing Expediter.

Respectfully submitted,

By .....

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EXHIBIT "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12,599

R. I. TAMEZ, APPELLANT,

versus

TIGHE E. WOODS, Housing Expediter,
Office of the Housing Expediter, APPELLEE

Appeal from the District Court of the United States
for the Western District of Texas

(November 22, 1949).

Before HOLMES, McCORD, and WALLER, Circuit Judges.

BY THE COURT:

The judgment appealed from is affirmed.